

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES O'NEAL,

Petitioner,

-vs-

MARGARET A. BAGLEY,

Respondent.

:

Case No. 1:02-cv-357

:

District Judge Michael R. Barrett
Chief Magistrate Judge Michael R. Merz

:

ORDER VACATING STAY OF PROCEEDINGS

On December 11, 2002, this Court stayed these capital habeas corpus proceedings to permit Petitioner to exhaust his then-pending petition for post-conviction relief in the Ohio courts, seeking to vacate his death sentence under *Atkins v. Virginia*, 536 U.S. 304 (2002), the United States Supreme Court decision prohibiting execution of the mentally retarded (Doc. No. 24). On May 4, 2007, Petitioner advised the Court that those proceedings became exhausted when the Ohio Supreme Court on May 2, 2007, declined jurisdiction of Petitioner's appeal from an adverse decision of the Hamilton County Court of Appeals (See *Ohio v. O'Neal*, Case No. 2007-0080, Entry attached as Exhibit to Doc. No. 36).

Accordingly, the stay of proceedings herein is vacated.

Petitioner's Return of Writ was filed September 9, 2002. To complete decision of this case, it is hereby ORDERED:

1. Petitioner shall file any desired motion to amend the Petition not later than June 1, 2007.
2. Respondent shall supplement the Return of Writ to include the record from the just-completed state court post-conviction proceedings not later than July 1, 2007.

3. Petitioner shall file any motion for discovery not later than July 1, 2007.
4. Petitioner shall file his reply to the return of writ not later than September 1, 2007.
5. Petitioner shall file any motion for evidentiary hearing not later than fifteen days after the conclusion of any discovery permitted on his motion or fifteen days after the Court denies discovery, whichever is later.

It is respectfully suggested to the parties and counsel that they consider at this time the possibility of consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c). All counsel have had further experience with the undersigned while this case has been stayed and may wish to consider consent in light of that experience. Consent must, of course, be voluntary and unanimous; there will be no adverse substantive consequences of declining to consent.

May 5, 2007.

s/ **Michael R. Merz**
Chief United States Magistrate Judge